United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

74-2429

UNITED STATES COURT OF APPEALS
FILED
DEC 13 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
United States Courthouse
Foley Square, New York, N. Y. 10007

B
P/S

MAX ALTMAN

Plaintiff, pro se; Appellant.

-against-

RICHARD M. NIXON, Individually and as President of the United States, et. al. Defendant-Appellees.

AFFIDAVIT OF SERVICE

Case No.

74-2429

STATE OF NEW YORK ss:
COUNTY OF KINGS

BRIEF AND APPENDIX

Max Altman, being duly sworn, deposes and says:

1. That, he is the plaintiff appellant, pro se. in the above captioned action.

2. That on the day of 1974 he enclosed three copies each of his Brief and Appendix on Appeal in a large manilla envelope, and addressed same to Mr. Scott P. Crampton, Assistant Attorney General, Tax Division - Attention of Robert T. Carney, Trial Section, United States Department of Justice, Washington, D.C. 20530.

3. That he referred to the descriptive indications as this record has carried all along for their purposes of identification.
SPC. GEA. VMT. CFK
5-51-12689

4. That this was deposited in the General Post Office Brooklyn New York on the 3 day of December 1974.

MAX ALTMAN
70 East 89th Street
Brooklin, New York 11236

Sworn to before me
this 3 day of Dec , 1974.

County: Kings
State: New York

IRWIN SCHAINDLIN
Notary Public, State of New York
No. 24-4668115
Qualified in Kings County
Commission Expires March 30, 1975

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
United States Courthouse
Foley Square, New York, N. Y. 10007

MAX ALTMAN

Plaintiff, pro se; Appellant.

-against-

RICHARD M. NIXON, individually and as President of the United States.

GEORGE C. SCHULTZ, individually and as Secretary of the Treasury of the United States.

EARL L. BUTZ, individually and Secretary of Agriculture of the United States.

DONALD M. ALEXANDER, Collector of Internal Revenue, Internal Revenue Service.

DONATO CANTALUPO, Appellate Branch, Northeast Regional Office, Internal Revenue Service

Defendant-Appellees.

BRIEF ON APPEAL

Civil Action

No. 74-2429

JURISDICTION

1. Title 28, Ch. 13, Sec. 291 Sub. C.

2. United States Code Annotated - Sec. 1291 Appendix 1.

II

THE ISSUE

The issue finds its origin, when appellant herein filed a complaint on April 12, 1971 with the court below. It moved through said court and was heard before this court on appeal for Relief from Judgment and Order. Docket No. 71-2085. argued March 6, 1972 and decided March 9, 1972. The Circuit Court held against this appellant on procedural grounds, but in its decision said that it appeared appellant had an action in tort, that he pursue his cause through the administrative agency and failing that bring his action again.

Appellant pursued his remedy with the Internal Revenue Service to no avail. Quite to the contrary they followed a course, which was wrong in part, when seizures were made from appellants savings account subsequently admitted to be wrong,[2]. Appendix but other of their action was not only arbitrary and capricious but on information and belief some of it falls within the purview of Title L.-OFFENSES AGAINST PUBLIC ADMINISTRATION ARTICLE 195-Official Misconduct and Obstruction of Public Servants Generally Sec. 195.00 and Sec. 195.05 Penal Law of the State of New York.

Appellant sensing that he became a target of the Internal Revenue Service for political reason[3]. Appendix started his second action by filing a summons and complaint Civil Action No. 73C1551 dated October 17, 1973. This appellant is in no way a political person, but is very much concerned about the governance of this nation, particularly at the federal level since he is a victim of discrimination as set forth in the second issue of Civil Action 73C1551.[4]. Civil Action No. 73C1551 originated as an action naming Richard C. Nixon individually and as President of The United States as one of the defendants.

A. At a hearing held before J. Judd on the 4th day of January, 1974 he directed that the above named be removed as a party defendant and an amended complaint be filed.

B. Appellant's first amended complaint was filed on January 17, 1974. Motions and memoranda were made and submitted. On March 8, 1974 the case was called. At the conclusion of the hearing R. T. Carney, Trial Attorney, Tax Division, Department of Justice, Washington, D. C., this appellant, and Cyril Hyman, Assistant U. S. Attorney repaired to Mr. Hymans office and it was substantially agreed that the matter should be settled by returning all funds seized from plaintiffs savings account if appellant would limit his allegations, exclusively to a tax matter. This was the intention, expressed by the court at the hearing. Mr. Carney agreed to this procedure except that he would need the consent of the Internal Revenue Service to pursue this course.

C. Plaintiff pursuant to this agreement filed his second amended complaint on March 27, 1974 in which Subd. 5 alleges "that these sums were illegally assessed and seized and that these collections were not due and oweing."

D. This complaint was accepted by the Court, and by the Justice Department as the one upon which the issues were to be resolved. It is obvious from the record that the tentative agreement discussed[1] went by the boards even upon filing the second amended complaint. No settlement was made.

E. Answer, Notice of Motion, Memorandum in Opposition were filed. Case called before J. Judd June 28, 1974. It was at this hearing, in more than three years of effort, that this appellant could see some opportunity to bring these issues before a jury. The court set the matter for pre-trial conference to September 15, 1974.

F. In the meantime, the Judiciary Committee of the House of Representatives conducted its hearings on the impeachment of the defendant Richard M. Nixon. The facts and evidence deduced at such hearings may have direct, but surely indirect relation to the first issue in appellants original complaint 73C1551 in the court below.

a) He was declared to be an enemy of the administration because he pursued his cause as a result of foreclosure of farm and home.

b) He was declared to be an enemy because he exercised his right to take part in the presidential primary of the political party in which he is a member.

c) Punitive action was taken against him by

1. Placing a tap on his home telephone.

2. Reversing the original actions of the Internal Revenue Service and seizing from his savings account at the Brooklyn Savings Bank by distraint more than $3,000 (three thousand dollars) for the years 1967 and 1969, but the seizures were made in 1972. Part of the 1967 and 1969 seizures were made despite determination before J. Judd in Walsh vs. U. S. 322 F. Supp. 613 decided November 18, 1970 and Brooks vs. U. S. 339 F. Supp. 1031 decided October 27, 1971 that the disability income he receives is not taxable income. This part of the seizures were ordered by the defendant, Donato Cantalupo Appellate Hearing Officer of the Internal Revenue Service, under an arrogant assumption to wit: "I do not agree with the determination of the courts."

3. To escape the embarrassment of having to face up to this issue before the very court before which the

determination was made, in their Defendants Answers to Plaintiffs Interrogatories dated August 29, 1974, on the face page they assert, "However the Internal Revenue Service now holds that such payments are excludable from gross income under that provision etc. etc." It took them nearly four years to arrive at a determination that a court of law had already made for them, and they removed money from a savings account despite such judicial determination. This is the stuff of anarchy!

4. To round out the arrogance of their conduct they conducted an audit of appellants returns for the years 1968 and 1970 in which they found deficiencies despite the fact that each and every year they made audits, my tax returns were made out with the aid and assistance of the Service Center of the Internal Revenue Service at the main office in Brooklyn, N. Y.
5. They induced audits of this appellants tax returns with the New York State Department of Taxation and Finance which availed them nothing, but proof of their intent to vex and annoy this appellant.
6. Upon information and belief they induced an inquiry by appellants employer. The Board of Education of the City of New York and beyond that there are serious implication that reach into violation of the Penal Statutes of the State of New York as stated before.
7. There is the matter of failure to properly identify the check of November 6, 1972 - $1,441.27 seized for the tax year 1969 to be explored.

a) All the evidence of the above allegations must be

explored to reach a fair and comprehensive determination of the issues in this cause.

b) On August 2, 1974 Plaintiff Appellant served on the U. S. Attorney 3:28 P.M. East Dist. N. Y. his Interrogatories re Discovery Proceedings.

c) He then filed a copy with the Cerk of the Court, same day right thereafter.

d) He then mailed a copy to R. T. Corney, Trial Attorney. Justice Dept. Washington, D. C.

e) On August 3, 1974 he sent Mr. Carney a letter advising him of the fact (d-preceding) and also called to his attention an addendum to be made to item no. 11 of such interrogatories.

f) About a week thereafter, this appellant was called via telephone by Mr. Carney and advised that he had <u>not</u> received my interrogatories. I advised him that I would check the matter and send him another copy.

g) I called Mr. Hymans office, he was on vacation. Spoke to his secretary and asked to see her. Met with her the next day.

h) She said it is procedure for their office to mail photocopies of documents to <u>their</u> interested parties when received which was done.

i) She mailed another copy that day which I verified by tel. conversation the next day.

<u>j</u>) On November 18, 1974 while examining the Cerks Docket to prepare the Index On Appeal, plaintiff appellant discovered that his document Interrogatories re: Discovery Proceeding was not docketed when filed on August 21, 1974. He then <u>refiled</u>

this document and it appears as item number 23 in the Index. The questions contained therein go to the heart of this appellants cause of action and to, delete them from response, raises the question whether this plaintiff can received a complete and unbiased resolution of the issues he raises in his complaint.

Assuming arguendo that the second Amended Complaint (Index No. 10) is the cause which goes to trial. Allegation No. 5. states "plaintiff alleges that these sums were illegally assessed and seized and that these collections were not due and oweing.

G. As the Judiciary Committee hearings progressed, it became apparent to this appellant, that serious implications could follow if the issues raised in his original complaint 73C1551 were left untried. Although institutional justice did flow out of the Judiciary Committee hearings, to limit the issues based on the facts and allegations in this cause of action could set a precedent to preclude any attempt at individual justice in these matters. To this appellant it seemed a most disturbing consequence.

H. On September 9, 1974 and made returnable for September 16, 1974 at Pre-Trail Conference appellant filed his Motion in Opposition in which he substantially asked that

a) all the issues of his original complaint be reins[illegible]

b) the pardon granted by President Ford to Richard M. Nixon in no way limit the cause of action pursued by this appellant,

c) to name the sovereign people of the United States to defend against tortious action of public officials in high

or low office, places an unjust burden upon them particularly when the very same actions complained of in this cause was found a gravamen in Article II of the Judiciary Committee's findings that led to defendant Richard M. Nixon resignation from the office of President of the United States,

d) each and every interrogatory submitted for response, filed August 21, 1974 is related to the allegations in his initial and final amended complaint. Said final complaint alleges "wrongful (should read illegal) seizure" and I submit that examination of said "wrongful (should read illegal) seizure" must and should be explored within the full context of all the issues as they relate to this cause of action.

I. At the pre-trial conference during which time appellant showed to the court the checks and other matters at issue, appellant asked J. Judd what disposition would be made of appellants motion of September 9, 1974. His honor replied "I'm not going to rule on your motion." At the end of conference J. Judd granted appellant 30 days in which to respond to two items of appellee's interrogatories which were not fully explained in the original response.

J. Relying on the statement by the court appellant on October 15, 1974 filed a renewal of his plea Index No. 19 submitted on September 9, 1974. He also filed the affidavit giving the comprehensive information requested by appellee at pre-trial conference at the same time. Index No. 20.

K. After filing these two documents appellant asked to see the ~~documents appellant asked to see the~~ docket entries.

a) He observed that an entry was made dated September 23, 1974 in which "By JUDD, J. - Order dated September 21, 1974 that

plaintiff's motion to reinstate his original complaint is denied, etc.

b) He asked to see the file but this had already been sent to the courts chambers.

c) Reviewing my notes I observe that

1. On October 17, 1974 I spoke to Mr. Stromberg, J. Judds law clerk, at about 4 P.M. He couldn't tell me whether J. Judd signed the order dated September 21, 1974. He thought it might be an erroneous entry.
2. On October 18, 1974 I learned from Mr. Hyman, Assistant U. S. Attorney, by telephone conversation that a proposed order was submitted to the court bearing date September 17, 1974. This bears the names of Scott P. Crampton, Assistant Attorney Gerneral, Tax Division by Jerome Fink Acting Chief Refund Trial Section.
3. I couldn't find a copy of this proposed order in my files.
4. On October 21, 1974 I picked up a photocopy of this proposed order from Mr. Hyman.
5. I was first made aware of J. Judd signing this order October 21, 1974. I met Mr. Strowberg in the elevator 5 P.M. We went to the Justice' Office, he made inquiry came out and advised me J. Judd signed this order. It carries date Done this 21 day of September, 1974.
6. On October 25, 1974 I received a copy of a letter and attached order addressed to Justice Judd. It is dated October 22, 1974. Photo copy attached Exhibit 5.

SECOND ASPECT OF THE ISSUE

Is There A Cause To Be Heard By Virtue of The Farm Foreclosure

A. The Original complaint 73C1551 fully sets forth appellant's cause of action. He pursues it in tort as suggested by the Circuit Court which heard his appeal for Relief from Judgment and Order in 71C406.

B. In addition this appellant was asked to, and did join in a class action dealing with the issue Civil Action No 2031-72 filed in United States District Court for District of Columbia October 11, 1972. This case was terminated as indicated on page 2 of appellants original complaint. (PRAECIPE)

C. At the pre-trial conference appellant submitted for examination by Mr. Carney-Trial Attorney U. S. Department of Justice and J. Judd.

1. A letter from the Extension Agent (see page 6 - original complaint), where his farm was located, offering expert information as to the cost of the poultry brooder house that he built to carry on his farming.
2. A letter from the President of The First National Bank and Trust Co. This letter offered first hand information as to the extent of the loss suffered by this appellant when his farm and home was foreclosed. (Exhibit 18 Index No. 14) ORIGINAL COMPLAINT.
3. These were the latest pieces of evidence that this appellant has been collecting from various sources to prove his loss to the Appellate Section of the Internal Revenue Service and to the court below. (See attached photocopies)
   a) Both these items were discounted as of no import to determine the question of loss.
   b) Much less than this i.e. Order of Sale-Pursuant to Foreclosure, purchase invoices of feed, and this

appellants statements satisfied the Internal Revenue Agents below who considered the matter in the first instance and at great length upon inquiry when favorable determination was made for this appellant.

D. Appellant submits for consideration.

1. Copy of the Complaint of an Action instituted by the Attorney General of The State of New York and Exhibit 3.

2. A news release by Attorney General Saxbe dated October 30, 1974. Exhibit 4. Both are directly related to plaintiffs allegations to this part of his cause of action. They speak for themselves in most eloquent fashion to establish that a cause of action exists.

   a) They first "ripped off" (see ppe 17 of Index No. 1) the independent producers and now moving on to the American consumer. They could never achieved the latter objective without obtaining the former. Things HAVE NOW COME FULL CIRCLE.

III

ARGUMENT

I submit, if the court below has rendered judgment without having had the opportunity to examine this appellants Interrogatories re: Discovery Proceedings his determination has missed the essence upon which all these proceedings are based.

1. The public record, Judicial, and of the Senate, Select Committee on Campaign Expenditures, the House Judiciary Committees Impeachment Proceedings, and the final results thereof, resulted in historical events of which any court of law can take judicial notice.
2. Such findings that were made, as they relate to this cause of action, have direct bearing to the questions raised in appellants interrogatories.
3. This appellant has additional documentary evidence and a tape recording, which has bearing on an approximate $6,000 loss in salary increments independent of this voluminous record, that should be examined under oath so that all the facts can be disclosed at a trial.
4. J. Judd's Memorandum and Order of November 13, 1974 (Index 22) is but a minimal limitation on the issues that have been raised by this appellant in all the documents that represent the record in this cause of action.

As to the loss suffered from foreclosure of farm and home the original record and the actions of the Justice Department (November 24, 1974 dateline Washington, November 23,-New York Daily News Capitol Stuff "The day of the easy gorge, the fast rip off is over,"--Saxbe pointed out that the department has 14 suits pending against the food industry, including price fixing complaints involving broiler chickens----) To-day, seem somewhat incongruous and illogical as it relates to this appellants quest for justice.

This issue has come full circle. After ripping off the family poultry farmer, with the aid of administrative agencies and the loopholes in tax legislation, and the failure to comply with other laws which were designed to maintain a competitive agricultural economy and the actions and Agricultural philosophy of Def. Earl L. Butz, the consumer now becomes the victim of the corporate takeover of the agricultural economy. (See anti-trust action of the Attorney General of the State of New York. EXHIBIT 3

These are the real issues in this cause of action and not the inconsequential limitations placed upon them by the court below. It is more than three years since this appellant has tried to get the family farm issue before a jury and I submit that all the interposition and obfuscation will not change the facts in this cause of action.

One of the defendants in the New York State action i.e. Ralston Purina Company was one of the first and most aggressive companies to push integration in the poultry meat industry. EXHIBIT 3 #8 (SECOND PAGE.) The defendant Earl L. Butz was the architect and prosecutor or this policy while an officer of said Ralston Purina Company. As Undersecretary of Agriculture, before joining Ralston Purina, policies were initiated by the federal government involving

a) Small Business Administration and Farmers Home Administration funding which advanced this policy to the disadvantage and detriment of this appellant's right to pursue his calling and resulted in his loss of farm and HOME. SEE SECOND APPENDIX.

b) This policy of administered pricing is still advanced by the defendant Earl L. Butz as Secretary of Agriculture while the Attorney General prosecutes it for its anti-trust manifestations.

c) The tax laws were not enforced in that they were permitted to be used as an instrument to invade agricultural enter-

prise for purposes of investment credit as risk capital, while the legitimate farmer could claim no such advantage.

d) This despite legislative mandate which imposed on the federal government the imperative to keep independent family farming a viable enterprise of the agricultural economy. (See Historical and Statutory Background page 3 Index No. 1)

This kind of action on the part of public officials does nothing but induce doubt and disbelief in the manner and methods by which government operations are conducted. The most heinous aspect of such action is that this conduct now attempts to evade an effort seeking redress for the loss of a home, one of the most sacred institutions under law of our entire national character. Who are the people sinned against? Those who

1. By their own initiative, industry, diligence, personal risk taking and
2. Whose qualities are extolled in every patriotic speech on national holidays
3. Have been reduced in numbers from 40% of the population at the trun of the century to less than 2-1/2% to-day.

Permit This And Nothing More Has Much Value.

Originally, in the Connally action, this appellant pursued his cause as a tax matter which was given valid and favorable consideration by the Internal Revenue Service, in the first instance, after exhaustive inquiry and consideration. With the advent of the Nixon Administration this action was reversed. This appellant then moved it to the courts. Although the Circuit Court rejected appellants position on procedureal grounds, as indicated previously, it stated that his cause was based in tort.

Appellant proceeded on that theory in the court below along with the "Watergate" involvement and now Justice Department says

it is a truncated tax matter. All through this controversy the Appellate Branch of the Internal Revenue Service through its agent, defendant Donato Cantalupo, proceeded on the premise that this appellant could show no loss. During the process of litigation particularly at the pre-trial conference a change of position took place. Faced with the pictures of a home and the physical appearances of the loss, plus the letter of Mr. Regenbogen President of the bank I did business with, a change of position took place. Unable to overcome the realities of such evidence a change of position took place. Timely taking.

The court below now makes this the basis of his ruling. I submit the inconsistencies in this entire matter makes a farce of any consistent and logical approach to a resolution of this cause of action. I am fully aware of the attempt to contest against the United States sovereignty but the facts in this case predominate over all attempts to rationalize the legal postures assumed by the defendants, governmental or individual whereas,

IV

RELIEF SOUGHT

1. The appellant herein pleads

a) that, the Memorandum and Order dated November 13, 1974 (Index No. 22) be set aside as being inadequate as to all the facts and law, as it relates to the issues raised by this appellant in his cause of action.

b) that, his original complaint dated October 17, 1973 (Index No. 1.) be heard as the basis for appellants cause of action,

c) that, each and every interrogatory, dated August 2, 1974, filed August 2, 1974 and refiled November 18, 1974 (Index No. 23) be answered with the following amendment to item 11 therein. "What is the record of grants in aid--new words added-(and/or loans) made by the Farmers Home Administration etc.

d) that, this court grant this appellant such other relief that in its judgment may be just and proper.

Respectfully Submitted

_____

MAX ALTMAN, Pro se.
70 East 89 Street
Brooklyn, N. Y. 11236
342-2155

DATED: this____day of_____1974.

V

APPENDIX-EXHIBITS

1. Title 28 Chapter 13 Sec. 291 Sub. C.

   A. In re Chicago, R. J. and P. Ry. Co. 162 F 2nd. 606-Page 611. "The statute was enacted nearly forty years ago. etc." Page 612 "I think the conclusion inescapable, that it is a statute to expedite judicial work" etc.

   B. U.S.C.A. 28 Sec. 1291. Page 383 - 91. Final decision construed. Because determination of whether a ruling is "final" etc.

   Page 383-92 Final decision defined. Under this section _ _ _ _ _ _, a "final" decision does not necessarily mean the last possible order to be made in a case. Gillespie v.U.S. Steel Corp., Ohio 1964, 85 S. Ct. 308.

2. Dated August 29, 1974 Defendant's Answers To Plaintiffs Interrogatories-Not docketed in Clerks Office. "However, the Internal Revenue Service now holds that such payments are excludable from gross income etc." Court determination on this issue was made for them. See pages 21 and 22 Original Complaint Docket No. 1. They finally conceded the ruling nearly four years after the fact.

3. Exhibits 1 and 2.

4. Exhibits 3 and 4. See Exhibits C and D. Appellants Brief On Appeal - this court - Docket 71-2085.

MAX ALTMAN

Dated this day of 1974.

To:
David G. Trager, U. S. Attorney
by Cyril Hyman, Asst. U.S. Attorney.
Eastern District
225 Cadman Plaza East Brooklyn, N. Y.

Scott P. Crompton by Jerome Fink and Robert Carney Trial Section
United States Dept. of Justice,

Ex 1.

HUBERT H. HUMPHREY
MINNESOTA

United States Senate

WASHINGTON, D.C. 20510

May 30, 1972

Mr. Max Altman
70 East 89th Street
Brooklyn, New York 11236

Dear Max:

Thank you for your recent contribution to my campaign. These primaries have taken a lot of money, time and energy, and it is the combined effort of many that has made it possible for us to survive. Your help in this effort is deeply appreciated.

We are now concentrating on California and will continue to work in those states which have yet to select their delegates.

With best wishes, and again my thanks.

Sincerely,

Hubert H.

Hubert H. Humphrey

This is to Certify That

Max Altman

is a member of

Sen. H. H. Humphrey's

Convention Staff

Authorized Signature

STATE

Ex. 1

Personal Reflections on th

On August 9, President Nixon resigned, cutting short the impeachment process, which was certain to result in his conviction and removal from office.

There was almost unanimous bipartisan agreement that Mr. Nixon was guilty of high crimes and misdemeanors. The overwhelming evidence of his misconduct is set forth in the Judiciary Committee's Report, accepted 412-3 by the House. It cannot, therefore, be said that Richard Nixon was hounded from office.

Serving on the Impeachment Inquiry was an historic experience — and a grim and exhausting one. For almost six months we reviewed evidence of Presidential misconduct. After thorough analysis and debate, the conclusion of impeachment was inevitable. Although I had been aware of the grave charges against the former President, I was unprepared for the pervasive abuse of power the Committee uncovered. Most disturbing was Mr. Nixon's use of government machinery — IRS audits, wiretaps and break-ins — to retaliate against those disagreeing with him. Such harrassment is the mark of tyranny, not American democracy. Although there was not time to present all the evidence during the televised debates, I hope the proceedings convinced you of the sincerity and honesty of our work.

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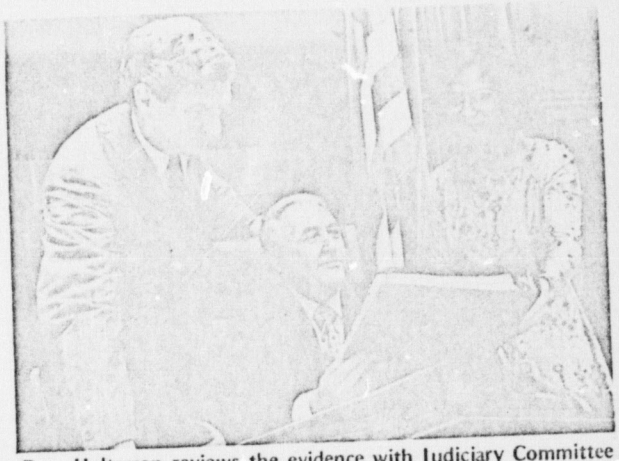


Rep. Holtzman reviews the evidence with Judiciary Committee Chairman Peter Rodino and Special Counsel John Doar.

Watergate break-in and was responsible for it.

"The Watergate break-in was not an isolated abuse of Richard Nixon's re-election campaign; it was but one element in a pervasive pattern of immoral, unethical and criminal conduct including spying on and disruption of opponents' campaigns, illegal corporate contributions, and offers of ambassadorships and high milk

REPENTANT WHITE HOUSE 'PLUMBER' KROGH TALKS OF GOVERNMENT, PRISON

FARMINGDALE, L.I. — "What we were doing, I now realize, was to deprive fellow Americans of their constitutional rights for the sake of a questionable doctrine of national security."

With these words, Egil Krogh, head of the Nixon Administration's "plumbers" unit, summed up the offense for which he served a prison sentence: the break-in at the office of Daniel Ellsberg's psychiatrist.

In a workshop discussion at NYSUT's Long Island Educational Conference titled "Prison: the Great Equalizer of Politicians and Other Persons," Krogh reviewed for more than 100 teachers the prevalent attitudes in the former president's circle that led to the plumbers' activities and the Watergate scandal.

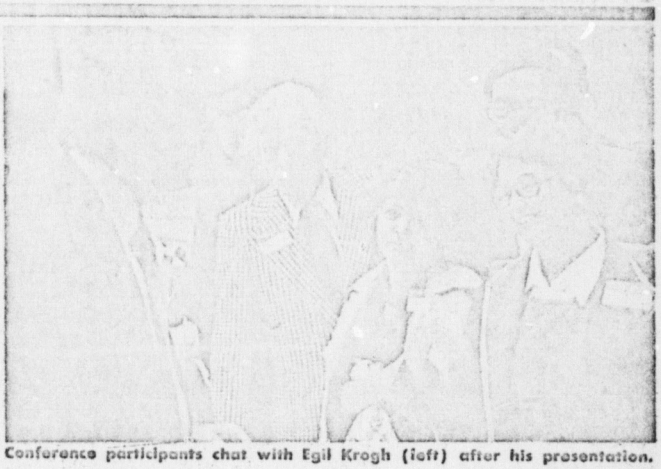
"There was an almost total absence of humor in the White House," he reported. "Everyone took his job so seriously that we lacked the kind of detachment that would have made it possible for us to see how ridiculous some of the things were that we were doing."

'Enemies' and 'Traitors'

Further, Krogh admitted, he and his companions were inclined to place labels on all outsiders — "enemies" and "traitors," for example.

"I learned in prison that, in order to survive, I had to see people as individuals — not as 'thieves' or 'burglars' or 'drug offenders.'" Krogh added that it was not until after he was released from prison and went to see Dr. Lewis Fielding, the burgled psychiatrist, that he saw him as an individual upon whose rights he had trampled.

Other White House attitudes that led to the administration's collapse, according to Krogh, were "group think," total identification with the wishes of the president and the inability to suggest that he was ever wrong, and the failure to question the moral implications of government actions. In this connection, Krogh quoted a veteran of 40 years' government service that the only questions ever raised were whether something would work or was expedient or how much would it cost, but never "Is it right?"



Conference participants chat with Egil Krogh (left) after his presentation.

Nixon Pardon

Krogh confessed his part in the "plumbers'" operation, he said, because he wanted to tell his children the truth about what he did, but the admission of guilt further served as a personally liberating force. President Ford's pardon of Nixon deprived the former president of the opportunity to face up to his own guilt, Krogh commented, and made it impossible for the public to know just what Nixon's crimes were.

The basic lesson prison taught him, Krogh said, was transmitted by a fellow inmate who told him: "Don't ever think you're better than anyone else here. In the first place, they'll resent it, and in the second place, it isn't true."

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

STATE OF NEW YORK
DEPARTMENT OF LAW
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047
TELEPHONE: 212-488-7574

JOHN M. DESIDERIO
ASSISTANT ATTORNEY GENERAL
IN CHARGE
ANTI-MONOPOLIES BUREAU
JOSEPH D. LANDI
DEPUTY BUREAU CHIEF

October 21, 1974

Re: Chicken Broiler Antitrust Litigation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE STATE OF NEW YORK,

Plaintiff,

v.

NATIONAL BROILER MARKETING ASSOCIATION,
A. C. SMITH MILLING CO.,
ALLIED MILLS, INC.,
B & P POULTRY CO., INC.,
BURNETT PRODUCE COMPANY,
CAGLE'S, INC.,
CARGILL, INC.,
CENTRAL SOYA CO., INC.,
CLAXTON POULTRY CO., INC.,
CONAGRA, INC.,
DENT POULTRY CO., INC.,
DE WITT FARMS CORPORATION,
FEDERAL CO.,
FIELDALE CORPORATION,
GOLD KIST, INC.,
H & H POULTRY CO., INC.,
HEUBLEIN, INC.,
HUDSON FOODS, INC.,
KANE-MILLER CORP.,
MARELL POULTRY COMPANY,
MAR-JAC POULTRY, INC.,
MARSHALL DURBIN COMPANIES,
MARYLAND CHICKEN PROCESSORS, INC.,
MFC SERVICES (AAL),
O. K. PROCESSORS, INC.,
PERDUE FARMS, INCORPORATED,
PETERSON FARMS, INC.,
PILGRIM INDUSTRIES, INC.,
THE PILLSBURY COMPANY,
POULTRY PRODUCTS CO., INC.,
PURNELL'S PRIDE, INC.,
RALSTON PURINA COMPANY,
SOUTHEASTERN HATCHERIES,
STRATFORD OF TEXAS, INC.,
TOWNSEND'S, INC.,
TYSON FOODS, INC.,
VALMAC INDUSTRIES, INC.,
WILSON & CO., INC.,

Defendants.

Civ. Action No.

C74-2044A

JURY TRIAL

DEMANDED

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COMPLAINT

Plaintiff alleges as follows:

8. The production of broilers requires a substantial investment in farmland, buildings and equipment. Historically, the production of broilers was carried on by persons who had made this investment, but in recent years, the use of contract grower arrangements has gained wide acceptance. These arrangements generally provide that the contract grower will raise the broilers from chickens supplied by the processor. While the processor at all times owns the broilers, the contract grower bears the major portion of the risk of loss of the investment in the farmland, buildings and equipment needed to produce the broilers. Substantially all of the broilers marketed by defendants are produced for them by contract growers under arrangements similar to those described above.

9. The price of broilers and broiler parts can be increased by reducing the number of broilers available to be marketed. The normal method of decreasing this number is by reducing the number of eggs that are set to be hatched.

10. During the period of time covered by this complaint, defendants and their co-conspirators sold and shipped substantial quantities of broilers and broiler parts to customers located in states other than the state in which said broilers were raised and slaughtered, and in other countries. In 1971, these sales of broilers and broiler parts amounted to more than $600 million, or about 50% of total sales of broilers and broiler parts in the United States. The defendants' activities, as described herein, are within the flow of and have an effect upon interstate commerce.

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U.S. Studying Food Prices For Possible Illegal Rises

10/30/74

By EILEEN SHANAHAN
Special to The New York Times

WASHINGTON, Oct. 29—Attorney General William B. Saxbe disclosed today that the Justice Department is investigating the possibility that recent food price increases may have resulted from price-fixing or other illegal behavior. He said the inquiry involved sugar, beef, eggs, tuna and other basic cost-of-living items.

Mr. Saxbe also disclosed a major new policy position. He asked Congress to repeal the Federal law that permits states to pass what are called fair trade laws, which prohibit the sale of certain products at prices lower than those fixed under the fair trade law.

Thirty-nine states, including New York, New Jersey and Pennsylvania, have laws that permit price-fixing of certain products under the name of fair trade.

The Attorney General also disclosed that the Antitrust Division intended to use "more agents of the Federal Bureau of Investigation" to work on antitrust cases. Departmental officials said that some F.B.I. agents had been used for this work in the past but they could not say how many were now assigned to antitrust cases or how many would be in the future.

In a speech here to the legal committee of the Grocery Manufacturers of America, Mr. Saxbe said that he was not yet sure whether the food price investigations would lead to criminal indictments or other legal action.

But he added that, in each of the areas of the food industry he mentioned, and many others besides, there is "the possibility of serious violations" of the antitrust laws.

In the case of sugar, the price of which has tripled in the last year, Mr. Saxbe said that there were indications of possible illegal actions "over an extended period of time." He did not say whether the suspected illegal practices consisted of outright price-fixing or of other things, such as agreements among producers not to sell in each other's prime marketing areas.

[The spot price for domestic sugar rose Tuesday in New York by 1 cent a pound to a new high of 44 cents, and the spot price for world sugar rose to 45 cents a pound, also a record. The wholesale price of extra-

Continued on Page 67, Column 4

Stock Prices Soar

Buoyed by a continued decline in interest rates, the stock market yesterday made its best gain in almost three weeks, pushing the Dow Jones industrial average up 25.50 points. Traders apparently ignored the news that the Government's index of leading business indicators fell 2.5 per cent in September. Details on Page 63.

THE ... TOBER 30, 1974

U.S. Studying Food Prices for Possible Illegal Acts

Continued From Page 1, Col. 7

fine granulated sugar was increased by 3.85 cents a pound to 53¼ cents. Prices in the supermarket will tend to move up accordingly.]

In remarks that maintained a tough tone throughout, Mr. Saxbe said that "those business firms and officials who fix prices and rig bids rob the public as surely as those who rob at the point of a gun."

For this reason, he said, the Justice Department will "seek both jail sentences and fines for those individuals convicted of criminal violations" of the antitrust laws.

The "new priority" of the department's Antitrust Division is price-fixing, he said, and "we likely will be bringing more and more criminal cases."

Rancher to Retailer

Antitrust attorneys are looking at the way in which beef is marketed on a national basis, he said, from the rancher to the retailer.

In particular, he continued, the department is looking at allegations that distributors of beef have engaged in illegal conspiracies to hold down the prices that are being paid to raisers of beef cattle. The Great Atlantic and Pacific Tea Company was charged with this in a private lawsuit on the West Coast. The investigation of a possible conspiracy to hold down prices paid by distributors to those who raise beef cattle will also examine the connected allegation that the prices paid livestock men decline but those charged to retail customers do not decline.

Mr. Saxbe said that a number of investigations were also pending of possible price-fixing, in specific regions of the prices of bread, milk, seafood, beer, and soft drinks. A number of price-fixing cases against tributors have already been brought.

"Antitrust violations are not casual crimes," Mr. Saxbe said. "Business tycoons are not seized by a fit of passion that compels them to rig bids. Corporate executives do not gather in the boardroom to fix prices because they are in the throes of a joint, irresistible impulse. They violate the antitrust laws deliberately."

He continued: "Those in the business community who would break the laws had better face one hard fact of life: the day of the easy gouge, the fast ripoff is over. The Department of Justice will not look the other way when business imposes upon the public what are nothing more than totalitarian practices and totalitarian disdain for our democratic way of

EX. 4

8 each

Rec'd 10/25/74 from Enclosure Justice Dept

October 22, 1974

SPC:JF:RTCarney:kjs
5-52-12689

RTC

Honorable Orrin G. Judd
United States District Judge
Eastern District of New York
United States Court House
Brooklyn, New York 11201

Re: Max Altman v. United States
Civil No. 73-C-1551 (ED N.Y.)

Dear Judge Judd:

Enclosed is an additional copy of the proposed Order in conformity with the Court's rulings at the pretrial conference on September 16, 1974, which was previously sent to your office on September 17, 1974. We understand that it has already been entered, but is not currently available in the Court's file.

Sincerely yours,

SCOTT P. CRAMPTON
Assistant Attorney General
Tax Division

By:
JEROME FINK
Acting Chief
Refund Trial Section No. 1

Enclosure

cc: Mr. Max Altman
70 East 89th Street
Brooklyn, New York 11236

United States Attorney
Brooklyn, New York 11201

Ex. 5.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MAX ALTMAN,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL ACTION NO. 73-C-1551

ORDER

The Court having heard the motions made by the parties hereto on September 16, 1974, and having considered the arguments and memoranda in support thereof, it is ORDERED:

1. That plaintiff's motion to reinstate his original complaint is denied;

2. That the defendant disclose to plaintiff whether the letter referred in Plaintiff's Interrogatory No. 1 is contained in the administrative files of the Internal Revenue Service;

3. That the defendant's motion to compel discovery is granted, and plaintiff is directed to furnish full, complete, and responsive answers to the defendant's interrogatories within 30 days of the date of this order; and further,

4. That the defendant's motion for a protective order is granted, and plaintiff is directed to limit any and all future interrogatories or other discovery to matters directly related to his income tax liability for the 1967 and 1969 tax years.

Done this _____day of

September, 1974.

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United States District Judge

SECOND APPENDIX

BUCHANAN V. WARLEY 245 U.S. 60 (1917)

BURTON V. WILMINGTON PARKING AUTHORITY
365 U.S. 715 (1961)

DISCRIMINATEES INTEREST IN EQUAL ACCESS
TO BENEFITS OF GOVERNMENTAL ASSISTANCE
TO DISCRIMINATOR:

FURTHER ILLUSTRATIONS - - - - Page iii.

BUT STATE PARTICIPATION MAY BE PERMANENT - - - Page 113. SEE Pages 114-133 Pages 135-141 Pages 142-143. SEE Pages 33-41

DISCRIMINATION AND THE LAW
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

MAX ALTMAN, :

Plaintiff, : No. 73-C-1551

v. :

UNITED STATES OF AMERICA, : November 12, 1974

Defendant. :

----------x

Appearances:

MAX ALTMAN
Plaintiff, Pro Se

HON. DAVID G. TRAGER
United States Attorney
Attorney for United States of America

By: CYRIL HYMAN, ESQ.
Assistant United States Attorney

ROBERT T. CARNEY, ESQ.
Trial Attorney, Tax Division
Department of Justice
Washington, D.C.

Of Counsel

J U D D, J.

MEMORANDUM AND ORDER

In this action for refund of income taxes, plaintiff in his latest motion papers "again renews his plea to the court to rule on his motion pursuant to Rule 21 dated September 9, 1974."

The action was originally filed against President Richard M. Nixon, Secretary of Agriculture Earl L. Butz, Secretary of the Treasury George M. Shultz, Commissioner of Internal Revenue Donald C. Alexander and one Donato Cantalupo, a hearing officer in one of the appellate units of the Internal Revenue Service. After a motion to dismiss for failure to comply with F.R.Civ.P.8(a), the court directed by order, endorsed on the back of defendant's motion papers on March 8, 1974, that the first amended complaint be dismissed, with leave to file a second amended complaint limited to the claim for tax refund and complete within itself.

The plaintiff thereafter filed a second amended complaint entitled "Max Altman, Plaintiff against Earl L. Butz, et al. and the United States of America, Defendants" on March 27, 1974. The government filed its answer on May 29, 1974 and the plaintiff moved on June 12, 1974 to set a date for trial. The defendant opposed the motion on the

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ground that a reasonable time was necessary to conduct discovery in view of the length of time that had elapsed before the filing of the second amended complaint.

After the filing of additional papers during the summer, the matter came on for argument before the court on September 16, 1974. The United States agreed to make refunds for 1967 and 1969 income taxes to the extent that the assessments had been based on inclusion of plaintiff's disability payments as taxable income. To the extent that the refund claim depended on a carry back or carry forward of any loss resulting from the foreclosure of plaintiff's real property in 1963, the United States took the position that plaintiff had the burden to show his taxable income for prior years in order to determine whether any of the loss was applicable to the years in suit. In view of the necessity for further investigation of fact it appeared inappropriate to fix a trial date. At the argument, plaintiff moved orally to reinstate his original complaint because of President Ford's action in granting a pardon to President Nixon.

The court signed an order on September 21, 1974, which denied the plaintiff's motion to reinstate his

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original complaint, directed defendant to make a certain disclosure to plaintiff, directed plaintiff to furnish full, complete and responsive answers to defendants' interrogatories, and limited future interrogatories or discovery to matters related to income tax liabilities for the 1967 and 1969 tax years.

On October 29, 1974 plaintiff filed a notice of appeal of "this cause of action" to the Court of Appeals pursuant to 28 USC § 291(c). This notice was probably intended as an appeal from the order of September 21 and may have intended to refer to 28 USC § 1291. The September 21 order would appear to be interlocutory and appealable only under 28 USC § 1292, and only within 30 days after its entry F.R.A.P.4(a).

The nature and basis of plaintiff's latest motion is quite vague. The court is convinced, however, that there is no justification for reinstating the original complaint. Rule 21, to which plaintiff refers, relates to non-joinder or misjoinder of necessary parties. There is no occasion for adding parties to the second amended complaint, which is now at issue as a suit against the United States for refund of

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income taxes, 26 USC § 7422(c).

Since earlier civil cases are still awaiting trial, the court will not fix a trial date until the case is reached in regular order on the court's next review of its civil inventory of over 300 cases.

It is ORDERED that plaintiff's motion be denied.

U. S. D. J.

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73C 1551 ALTMAN vs. NIXON, et al

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
10-17-73	Complaint filed. Summons issued.	1	JS5
XXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	XXXXXX	XMB
11-20-73	Summons returned and filed / executed	2	
12-18-73	Notice of motion with annexed memorandum of law to dismiss complaint ret 1-4-74 filed.	3	
12-28-73	Pltff's affidavit in opposition to motion to dismiss filed.	4	
1/4/74	Before JUDD, J. Case called. Both sides present. Motion argued 2 weeks for further papers. Decision reserved		
1-17-74	Amended complaint filed.	5	
1-21-74	By JUDD, J. - Order denying motion to dismissdtd. 1-21-74 filed on back of document # 3.	----	
1-21-74	By JUDD, J. - Order dtd. 1-21-74 extending time for defts to answer amended compalint to 3-28-74 filed. (p/c mailed to attys)	6	
2-25-74	Notice of motion for an order of dismissal ret. 3-8-74 filed @ 10:00 A.M.	7	
3-5-74	Memorandum of law in opposition to motion to dismiss filed.	8	
3/8/74	Before JUDD,J.- Case called- Both sides present-Motion for an order to dismiss the complaint, etc. argued-Motion granting motion in part (see order on back of motion papers #7)		
3/8/74	By JUDD,J.- Order dated 3/8/74 filed that motion granted to the extent of dismissing the amended complaint with leave to file a 2nd complaint within 20 days, etc.	9	
3-27-74	Amended complaint filed.	10	
5-29-74	ANSWER with demand for trial by jury filed.	11	
6-12-74	Notice of motion to set a trial date ret 6-28-74 filed.	12	
6-24-74	Memorandum in opposition to pltff's motion for trial or alternatively for judgment filed.	13	
6/28/74	Before JUDD,J. - Case called- Both sides present-Motion argued-Decision reserved-Case adjd to 9/15/74 for pre-trial conference		
7/16/74	Affidavit of Max Altman filed re: Discovery Proceedings	14	
9/5/74	Notice of Motion, ret. Sept. 16, 1974 filed for for an Order to compel Discovery, etc.	15	
9-9-74	Pltff's motion in opposition ret 9-16-74 filed.	16	
9-16-74	Before JUDD, J.--Case called on hearing for deft's motion pursuant to rules 37 (a), etc. Order to be submitted. Settle order on notice.		
9/23/74	By JUDD,J.-Order dated 9/21/74 that plfff's motion to reinstate		

CIVIL DOCKET 73 C 1551 MAX ALTMAN VS. U.S.A.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
	his original complaint is denied, etc.			17
10/4/74	Affidavit of Robert T. Carney filed.			18
10-15-74	Pltff's renewed plea on motions submitted 9-9-74 filed.			19
10-15-74	Pltff's affidavit filed.			20

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney — certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation — shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

Check Applicable Box

☐ Individual Verification — being duly sworn, deposes and says: deponent is the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ Corporate Verification — the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at

Check Applicable Box

☐ Affidavit of Service By Mail — On 19 deponent served the within upon attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit of Personal Service — On 19 at deponent served the within upon herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19

.....
The name signed must be printed beneath

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: — Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.
Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney(s) for

Original Court Clerk

Index No. 74-2429 Year 19 74

United States Court of Appeals
Second Circuit
United States Courthouse
Foley Square, N.Y. N.Y. 10007

MAX ALTMAN

Plaintiff, pro se; Appellant.

-against-

RICHARD M. NIXON, Individually and as President of the United States, et. al. Defendant-Appellees.

BRIEF ON APPEAL

Max Altman,

Attorney for Pro se

Office and Post Office Address, Telephone

70 East 89th Street
Brooklyn, N.Y. 11236
212-342-2155

To Scott P. Crompton
by Jerome Fink and Robert Carney
Trial Section United States
Attorney(s) for Dept. of Justice, Wash. D.C. 20530

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

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